



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Jason Whyte : ORDER
Tax Registry No. 937733 : OF
Brooklyn Court Section : DISMISSAL
-----X

Police Officer Jason Whyte, Tax Registry No. 937733, Shield No. 29767, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12338, as set forth on form P.D. 468-121, dated September 5, 2014, and after a review of the entire record, has been found Guilty of Specification Nos. 1 and 2; and Not Guilty of Specification No. 3.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Jason Whyte from the Police Service of the City of New York.


JAMES P O'NEILL
POLICE COMMISSIONER

EFFECTIVE: AUGUST 23, 2017

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

July 11, 2017

-----X
In the Matter of the Charges and Specifications : Case No.
- against - : 2014-12338
Police Officer Jason Whyte :
Tax Registry No. 937733 :
Brooklyn Court Section :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Howard Tanner, Esq.
Tanner & Ortega, LLP
305 Broadway, 14th floor
New York, NY 10007

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

Charges and Specifications:

1. Said Police Officer Jason Whyte, while off-duty and assigned to the 109th Precinct, on or about August 31, 2014, at 1230 hours, at 153-36 Rockaway Boulevard, Queens, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Whyte wrongfully initiated a physical altercation with Ghiresh Sookdeo, an employee of Rockaway Tire Center. (*As amended*).

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS

2. Said Police Officer Jason Whyte, while off-duty and assigned to the 109th Precinct, on or about August 31, 2014, at 1230 hours, at 153-36 Rockaway Boulevard, Queens, New York, after being involved in an off-duty incident, wrongfully failed to remain at the scene of an off-duty incident and wrongfully failed and neglected to request the response of a Patrol Supervisor for the precinct of occurrence of the off-duty incident, as required.

P.G. 212-32, Page 1, Paragraph 1 & 2 – OFF DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE
COMMAND OPERATIONS

3. Said Police Officer Jason Whyte, while off-duty and assigned to the 109th Precinct, on or about August 31, 2014, at 1230 hours, at 153-36 Rockaway Boulevard, Queens, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Whyte wrongfully refused to pay for the partial repair of his tire rim by Rockaway Tire Center.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 24 and June 5, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Ghiresh Sookdeo, Umesh Sookdeo and Sergeant Marni Schwager as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of Specifications 1 and 2 and Not Guilty of Specification 3.

FINDINGS AND ANALYSIS

This case arises out of an incident where Respondent, after arguing over a price dispute with a tire repair shop owner, punched the owner, Ghiresh Sookdeo, in the face and broke his jaw. Respondent has admitted to immediately leaving the scene without calling for medical assistance and failing to notify the Department at any point.

While certain details of the moments immediately preceding the punch being thrown are disputed, the following is a summary of the uncontroverted facts. On the morning of August 31, 2014, Respondent, who was off-duty, needed a rim repair as his tire had gone flat and the rim had cracked as he was trying to pull over on the highway. After trying unsuccessfully to get it repaired on Long Island, where most shops were closed due to the holiday weekend, he ended up at Rockaway Tire Center on Rockaway Boulevard in Queens. The shop is owned and operated by Ghiresh Sookdeo, along with his father and brother, Umesh Sookdeo. (Tr. 18, 172-74) A part-time employee, Person A was also present at the shop. (Tr. 45-46)

Ghiresh quoted Respondent a price of \$89 for the repair and Respondent agreed. He left the rim and tire at the shop and returned home to prepare for work. The repair, however, could not be performed onsite at Rockaway Tire because they had a compressor in their shop and state law barred the use of flames or fire in the same vicinity. (Tr. 19-20, 97-98, 175-76) Ghiresh sent the rim to a nearby shop owned by an individual named Person B, who was to repair and return it in two hours' time. One of the Sookdeo brothers would then reattach it to the tire. (Tr. 20-21)

In the interim, Respondent spoke by a phone with an unnamed acquaintance who advised him he could have had the repair done for a cheaper price elsewhere. (Tr. 176) Before Person B finished with the rim, Respondent returned to the Sookdeos' shop and informed them he wanted his rim and tire back because the price was too high. He waited in his car while Ghiresh called Person B to return with the rim. Person B returned shortly thereafter with the partially repaired rim. A conversation ensued between Respondent, Umesh, Ghiresh and Person B at the back of his vehicle. The sum and substance of what was said is disputed but surveillance footage entered into evidence depicted the following:

- 0:01 :-5:30-Respondent's vehicle can be seen parked in the street in front of the shop facing the opposite direction of traffic.
- 5:31-5:50-Person B pulls up, parking his red truck in front of the shop. Umesh Sookdeo exits the shop and approaches Person B at the rear of the truck. Respondent exits his vehicle and approaches them. At that point, all three men are out of the camera's view.
- 5:52-6:40-Ghiresh Sookdeo, wearing a baseball cap, exits the shop and makes his way toward the group. Only his back and part of his head are visible. The trunk appears to be open and Ghiresh appears to gesture with his hands a few times in discussion.
- 6:46-6:50-Respondent comes back in view as he walks back toward his vehicle, carrying his rim, but with his head turned to Ghiresh, who is walking toward the shop with his head turned toward Respondent. They seem to be making comments to one another.
- 6:51 6:55-Ghiresh then appears to be heading into the shop, putting his right hand in his pocket. Respondent, whose head is still turned in his direction, begins to walk toward him. Ghiresh, appearing to still have his hand in his pocket, then takes multiple steps toward Respondent.
- 6:56-Respondent drops the rim in the street and Ghiresh, who is still on the sidewalk, stops walking toward Respondent.
- 6:58-Respondent moves onto the sidewalk, taking multiple steps, and, with his right fist, punches Ghiresh in the face. As Ghiresh falls to the ground on his back, Respondent's left hand appears to come forward. Respondent steadies himself and takes a few steps back.
- 7:02-7:16-Respondent picks up his rim. He glances back at Ghiresh, who is on the ground, for about three seconds before turning to put the rim in his car. He then gets in the car and pulls away.

(Dep't Ex. 3; Tr. 36-42, 77-78, 81-87)

Ghiresh Sookdeo was taken by ambulance to [REDACTED] Hospital where he was diagnosed with a mandibular (jawbone) fracture. On September 2, he was ordered to adhere to a special diet of pureed food due to dysphagia (difficulty swallowing). The records also note that on this date, an incision was made in his mouth. He testified that two plates were inserted into his mouth and Sergeant Schwager of IAB noted that his jaw was wired shut when she spoke with him days after the incident. He was given [REDACTED] and ibuprofen for pain in addition to [REDACTED] and was discharged from the hospital on September 3, 2014. (Dep't Ex. 1; Tr. 28, 90, 168)

Respondent was arrested and charged with first degree felony assault. He ultimately pled guilty to assault in the third degree, a misdemeanor. He served no jail time and paid full restitution to Ghiresh Sookdeo for medical bills totaling \$18,000. He never made any payment for the partial repair of his rim and to date has never gotten or attempted to get his tire back. (Tr. 12, 182, 216-17)

There is consensus among all witnesses that Respondent and Ghiresh Sookdeo had words over the price of the repair; that Respondent punched him in the face, breaking his jaw; and that Respondent left the scene almost immediately, notifying no one in the Department as to what had transpired. What is in dispute are the words exchanged between Ghiresh and Respondent and whether Respondent had any justification to throw a punch. Also at issue is whether Respondent committed misconduct by not making any payment for the partial repair of the rim.

Ghiresh recounted that Respondent came to his shop with a broken rim that had two bends and a crack. He explained to the tribunal that to complete the repair, he had to take the tire off and send the rim to another shop, owned by Person B, because he was

not permitted to use heat or weld in his shop. Respondent, he contended, agreed to the \$89 price and was told to return in about two hours to have the rim and tire put back on the car. (Tr. 19-21)

Ghiresh testified that when Respondent returned, he was "furious," parking his car in front of the shop opposite traffic. Respondent told him his price was "ridiculous," claiming he could have it done in Brooklyn for sixty dollars and insisting he did not want the repair completed. (Tr. 21-23)¹ He had Respondent wait in his car and called Person B to bring back the rim, which was "halfway" repaired at that point. When Person B returned, a brief discussion ensued outside where Ghiresh tried to explain to Respondent that the rim was partially fixed and that Person B needed to be paid for his work. Respondent indicated he would not pay. (Tr. 22-26, 37, 51-55) As to his own fee, Ghiresh explained, "He was angry. I wasn't worried about my fee." (Tr. 40) Respondent then took the rim and began walking toward his car. Ghiresh advised that he would not give Respondent his tire back until he "paid somebody." He did not specify an amount, but told Respondent he had to give Person B "something." (Tr. 26, 77-78, 92) On cross, he acknowledged that in anger, he said to Respondent, "why you gotta act like a little bitch?" but clarified later that he was only "slightly" angry. (Tr. 59-60, 93)² After he made this comment, Respondent turned around, dropped the rim and punched him in the face, causing him to fall to the ground. (Tr. 26-27, 52, 59, 62, 75)

¹ Ghiresh stated that he made \$25 off sending the rim to Person B and conceded that if Respondent had found a shop that was able to repair the rim onsite, the price likely would have been about \$20 less. He acquiesced that he did not disclose this to Respondent. (Tr. 50-51)

² Ghiresh initially testified that he told Sergeant Schwager of IAB that he had called Respondent a "bitch" when they spoke a few days after the incident. However, he then conceded that he could not recall whether he advised Schwager of the bitch comment and confirmed that he told her that the last thing he said to Respondent was that he could have his tire back if he paid half the repair price. (Tr. 60-65) He recalled that during their conversation, which took place the day after he got out of the hospital, he felt tired and his ability to speak was impeded by plates in his mouth, but agreed that he never indicated that he did not feel up to making a statement. (Tr. 89-91)

With regard to his specific movements immediately prior to the punch, Ghiresh testified that as Respondent walked to his car with the tire, he initially had his hands out of his pockets. (Tr. 56) At some point prior to calling Respondent a bitch, he put one hand in his pocket, explaining that he was reaching for his phone to call his father for advice, as this was the first time he had been in this type of a situation with a customer. As he made the comment and immediately after, with his hand still in his pocket, he took a few steps toward Respondent, who had started to walk toward him. However, he stated that once Respondent dropped the rim, he took no additional steps and had his hands at his sides. He did not attempt to retreat because he "didn't think [Respondent] was going to hit me or anything," due to their size difference.³ (Tr. 56, 70-73, 75-86, 88, 91-92)

Ghiresh denied ever calling Respondent a nigger. (Tr. 56, 65) On cross, he also denied telling Respondent to "take the rim" and agreed that his brother and Person A would have been mistaken or lying if they indicated that they heard him say that. (Tr. 66-68) On redirect, he further detailed that he told Respondent, "if he pay Person B, he can just take the rim and go." On re-cross, however, when asked if he ever said something to the effect of, "forget it, you don't even gotta pay that, just take the rim and go," Ghiresh stated he could not recall. (Tr. 90, 93)

Umesh Sookdeo corroborated much of his brother's testimony about the initial interaction with Respondent. Like Ghiresh, he testified that Respondent agreed to the quoted repair price, that the rim was sent to Person B's nearby shop and that Respondent was "very angry" when he returned, claiming he had been overcharged. (Tr. 97-102)

When Person B returned with the rim, Umesh and his brother tried to show Respondent

³ Ghiresh characterized himself as a "baby" and "small," compared to Respondent but agreed that he is almost six feet tall. (Tr. 75-76) Respondent testified that he stands 6 foot 2 and weighed about 250 pounds. (Tr. 188)

the partial fixes that had been made and his brother requested that Respondent "take care of Person B" and he would "be all right to go." He did not remember whether his brother asked Respondent to pay Person B a specific amount but testified that Respondent indicated he would not pay anything. (Tr. 103-04) Umesh conceded on cross that he then heard his brother say "forget it, you don't even gotta pay, just take the rim and go." (Tr. 108-09, 113)⁴ Respondent took the rim and started walking toward his vehicle but then asked for his tire back. Umesh recounted, "My brother told him he can have the tire back if he pays Person B the half...He did not want to pay . . . and he dropped the rim right in front of the car and swung at my brother." (Tr. 104) He confirmed on recross that the last thing he heard his brother say before he was punched was that Respondent could not have the tire back until he paid Person B (Tr. 120-23)

Umesh estimated that he was standing about a foot and a half from his brother when Respondent punched him. He believed three punches were thrown, two of which connected, but conceded that his recollection was not "one hundred percent," given the amount of time that had passed. (Tr. 109-12)

Sergeant Marni Schwager, who had been investigating this case while assigned to the Internal Affairs Bureau, also testified. She confirmed that she interviewed Ghiresh, Umesh and their employee, Person A. She did not independently recall Umesh or Person A saying that Ghiresh told Respondent to "just take the rim and go" and made no reference to such comments in her reports. However, after reviewing the interview

⁴ On recross. Umesh confirmed that he recounted to Sergeant Schwager on September 3, 2014. "We told [Respondent] just like 35, 40 bucks [to pay to Person B...And he was like oh no that's still too expensive for just two bends. And my boss . . . the other guy that got punched in the face...he was like you know, forget it, you don't even gotta pay that. You know, you can just take the rim and go." (Tr. 116-17) Umesh agreed that his memory of the incident was better when he spoke with Schwager in 2014 and explained he did not disclose that Ghiresh was his brother during that conversation because he was nervous. (Tr. 117-20)

transcripts, she acknowledged that both men did tell her this. (Tr. 152-57, 164) She further testified that Ghiresh never mentioned calling Respondent a bitch. (Tr. 159-60) Finally, she acknowledged that she mistakenly stated in her final report that Respondent struck Ghiresh twice. She clarified that she believed Respondent swung a second time and missed because Ghiresh was already on the ground. (Tr. 162-66)

Respondent testified on his own behalf, acknowledging that he punched Ghiresh Sookdeo but maintaining that he was not the one who started the initial verbal altercation. He explained that after searching for a tire shop on Long Island, he ended up in Queens at Rockaway Tire. (Tr. 172-74) When he arrived, Ghiresh Sookdeo quoted him a price of \$89 for the repair and he agreed. According to Respondent, it was not explained that the rim would need to be sent to another shop for the actual repair. At home, Respondent spoke on the phone with a friend who indicated that he could have paid \$40 or \$50 for the job at another shop. He then attempted to call Rockaway Tire, but no one answered the phone, so he "hustle[d] back" to the shop to tell them to cease working on the rim. (Tr. 172-76, 189-92)

When he returned, he tried to speak to Ghiresh about the price but "for whatever reason, it just got bad in terms of him using profanity. I was using profanity back. We were going back and forth about the price." Respondent asked for his tire and rim back, learning then that Ghiresh had sent the rim out for repair. He acknowledged that he started "getting heated" and "a little bit upset" and "took it upon myself to go back in my car and wait," assuming someone would be returning with a repaired rim. (Tr. 178, 194, 206-07)

Respondent testified that when Person B returned with the rim only half repaired, he felt "more relaxed" and "tried to be a gentleman" about the situation. He claimed to have said, "Listen, you know we had our issues..." "it is what it is, I'll pay some work for the tire...you know this is not even fixed right . . . I'll give you something, but I'm not going to pay the full amount." Respondent conceded on cross after reviewing his Department interview transcript that he did not mention to Department investigators that he offered to make a partial payment. He and Ghireh "had words," going "back and forth" about the price. Respondent contended that Ghireh ultimately told him to "take the fucking rim and get out of here." He took this to mean that he did not owe any money and began to walk off, thinking "if I stay . . . and started cursing with him back and forth, it would have gotten worse." (Tr. 179, 183-84, 194-98)

Respondent contended that as he walked toward his car, he heard Ghireh say something to the effect of "these fucking niggers." He pointed out that he had not and did not make any racial comments toward Ghireh either before or after hearing this comment. He turned around and walked toward Ghireh, asking, "What did you say?" Ghireh walked towards him "kind of dipping his hand" in his pocket. Respondent noted that while they were talking previously, Ghireh had not had his hands in his pocket and now he appeared as if he was trying to pull something out. He explained, at that point, "I just hit him before he gets to do whatever he wanted to do." He described the encounter further, explaining, "[a]s he's coming towards me, he's dipping his hands in his pocket. . . I'm not going to expect anything good from this guy. So I just hit him before he could pull out whatever he wanted from his pocket." (Tr. 180-82, 199-202, 223) Respondent testified on cross that he never saw a weapon and confirmed that he told investigators at

his Department interview that he did not think that Ghiresh had a gun in his pocket. He further agreed that Ghiresh never threatened him with a weapon and acquiesced that he made no attempt to retreat or take cover in his vehicle before throwing the punch. (Tr. 203-08, 212)

After the punch, Ghiresh “went down. When he was down, I remember him looking up at me and his eyes were open and I just picked up the rim and left” without calling for an ambulance or a patrol supervisor. He acknowledged that he made a “big mistake” in not notifying the Department about this incident, but stated he was “caught up in the heat of the moment.” He did not believe at that time that Ghiresh was “as hurt as it came out to be.” (Tr. 182-83, 212-13)

Respondent acknowledged that he was originally charged with first degree felony assault but ultimately pled guilty to third degree assault, a misdemeanor. At no time did he indicate to the criminal court judge that he believed he was acting in self-defense “because I was advised by my lawyer not to,” as it would “make the situation more complicated.” He also never informed the criminal court judge of the alleged racial slur. He stated he was advised that if he proceeded to trial, he would “have a very hard time beating the [felony] charge” because of the video and medical records, though he never actually saw video of the incident or Ghiresh’s medical records prior to entering his guilty plea. (Tr. 184-87, 217-20)

Specification 1- Wrongfully Initiating a Physical Altercation

On the question of whether Respondent initiated a physical altercation, the video speaks for itself. There is nothing physical about the interaction between Respondent and

Ghiresh Sookdeo until Respondent threw a punch. Respondent was the initial aggressor and therefore must be found Guilty of Specification 1.

In making this finding, I reject Respondent's counsel's argument that the complainant initiated the physical altercation "by uttering a racial epithet and then walking towards [Respondent] and then sticking his hand in his pocket." (Tr. 231) First, even if the tribunal was to accept Respondent's uncorroborated claim that Ghiresh Sookdeo called him a nigger, making such a comment is, by nature, verbal, not physical. While it is highly inflammatory, offensive and likely would escalate tension, it is not a physical act.

As to the claim of self-defense, Ghiresh Sookdeo's acts of taking steps toward Respondent and dipping his hand into his pocket also did not warrant Respondent's turning this altercation physical. The fact that his hand was in his pocket means very little given that Respondent admitted that he made no threats and Respondent saw nothing indicative of a weapon. The video showed that Ghiresh had, at least for a few seconds, turned away from Respondent and appeared to be heading back into his shop. It is true he then turned his head and made a comment in Respondent's direction, but he took steps toward Respondent only after Respondent began to move toward him, never even leaving the sidewalk. Moreover, if Respondent were truly in fear, he would have backed up and retreated to his nearby car while Ghiresh was still a safe distance away, rather than continue moving toward him.

It was Respondent who moved from the street to the sidewalk and continued to step forward so that he could strike Ghiresh, not the other way around. Looking at the video, in the second immediately preceding the punch, Ghiresh was almost entirely still,

not appearing at all imposing or threatening. That was the moment the incident shifted from two men arguing and hurling insults and/or profanity at one another to a physical altercation. Ghiresh Sookdeo's behavior and language may very well have been out of line or offensive but watching the video, there is no way to logically conclude that anyone other than Respondent initiated this physical altercation.

Specification 2- Failing to Request Response of a Patrol Supervisor to Off-Duty Incident Scene

Having admitted that he made no notifications whatsoever to the Department regarding this incident, Respondent is found Guilty of Specification 2.

Specification 3- Wrongfully Refusing to Pay for Partial Rim Repair

The tribunal is not convinced that Respondent acted wrongfully in refusing to pay for the partial rim repair. I note preliminarily that I in no way credit Respondent's assertion that he tried to be a "gentleman" and initially offered a partial payment for the partial repair. The credible evidence indicates, though, that after he and Ghiresh went back and forth arguing over what was owed, Ghiresh told Respondent, "forget it...just take the rim and go." This is not only consistent with Respondent's account but the accounts provided to IAB by Umesh Sookdeo and the Sookdeos' employee, Person A just days after the incident. Umesh, who agreed that his memory of the incident was more clear in 2014, confirmed at trial that he told Sergeant Schwager of IAB that, "We told [Respondent] just like 35, 40 bucks [to pay to Person B]...And he was like oh no that's still too expensive for just two bends. And my boss . . . the other guy that got punched in the face...he was like you know, forget it, you don't even gotta pay that. You

know, you can just take the rim and go.” (Tr. 116-17)⁵ If such a comment was made, it would be reasonable for Respondent to believe that, to put an end to their argument, Ghiresh was not going to charge him for the partial repair. Though Ghiresh initially insisted that he told Respondent he could take the rim and go only if he paid Person B for the work that was already done, he became more vague on recross, testifying that he “[could not] recall” whether or not he had said, “forget it, you don’t even gotta pay that, just take the rim and go.” (Tr. 93)

Reviewing all of the testimony in context, the credible evidence indicates that Ghiresh Sookdeo first insisted that Respondent pay Person B for the partial rim repair but ultimately, after Respondent continued to balk at paying, relented and told Respondent to “just take the rim and go.” This fits plausibly into the larger narrative where Ghiresh subsequently called Respondent a derogatory term as he was leaving with the rim.

As Respondent was told to take the rim and go, I find no misconduct in not tendering a payment for the partial repair, as he genuinely would have believed he did not owe anything. He is therefore found Not Guilty of Specification 3.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent’s service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

⁵

Though Person A did not testify at trial, Sergeant Schwager testified, after reviewing a transcript of her conversation with him, that he had stated to her that Ghiresh made a similar “take the rim and go” comment. (Tr. 156-57)

The Department has recommended termination, arguing that Respondent's behavior shows that he lacks the proper temperament to serve as a police officer. (Tr. 249-50) The tribunal agrees.⁶ While it is true that there are a significant number of physical altercation cases that have not resulted in termination, officers have been dismissed in cases where their behavior raises serious doubts about their ability to exercise prudent judgment, something that is absolutely essential for police officers. One example can be found in *Case No. 2009-57* (June 4, 2012)⁷ where an eight-year officer, after having previously been convicted of third-degree assault in criminal court, was dismissed from the Department after a mitigation hearing where he pled guilty to being involved in an off-duty physical altercation with an individual that resulted in injury; causing injury to another person with intent to do so; recklessly engaging in conduct which created a substantial risk of injury to another person; and failing to remain at the incident scene and notify the Department. In that case, the injured person was alleged to have dented the officer's car and used profanity toward him. The trial commissioner reasoned that the kind of provocation to which the officer "reacted so poorly . . . was no greater than the kind of provocation he might face in his duties with this Department. This fact raises concerns that [the officer] might similarly overreact while on duty. As a result, his continued employment as a police officer might pose a safety risk to the public."

Though the particular charges and circumstances in that case are different than the ones presently at bar, the very same concern exists here. Respondent reacted violently to

⁶ In making this recommendation, I note that Respondent has been found Guilty of only two of the three charged specifications. The DAO took the position that termination was warranted if Respondent was found Guilty of either or both of Specifications 1 and 3. As to Specification 1, I concur.

⁷ At an earlier point in the disciplinary process, this case was classified under Case No. 2009-84853. The final adjudication, however, was under Case No. 2009-57, as cited above.

Ghiresh Sookdeo calling him a vulgar name. Whether he used a profane word or an even more offensive racial slur is of no real relevance. Police officers on patrol will likely, at some point, encounter a member of the public who taunts them with profanity or even deeply insulting racial slurs. The Department expects, however, that in these difficult situations, officers will exercise impulse control and not resort to violent outbursts. Respondent failed to meet that expectation here, raising questions as to whether he can be trusted to show professionalism and restraint in his interactions with the public as a police officer.

Moreover, after escalating what began as a price disagreement into a physical altercation by punching Ghiresh Sookdeo with such force that he fell to the cement ground and sustained a broken jaw, Respondent made no attempts to call for assistance, let alone notify the Department. He did not even check on the injured man and instead showed total indifference as he quickly and callously fled the scene with his rim. *See Case No. 2011-5248* (January 8, 2016) (eight-year officer with no disciplinary history terminated for engaging in a physical altercation with a civilian without police necessity. After striking a teen who had just been released from custody inside an alleyway, Respondent, who had just finished his tour, walked away, leaving him on the ground. Though there were only very minor injuries to the complainant, the trial commissioner found this to be "conduct unworthy of a NYPD officer."); *see also Case No. 2015-13118* (Aug. 8, 2016) (finding "a sufficient basis to impose a penalty of termination" even where force was limited to single stomp on a prisoner's head because of "the gratuitous nature of the assault and Respondent's effort to evade all responsibility."). NYPD officers are expected to maintain a high standard of integrity at all times and respect the

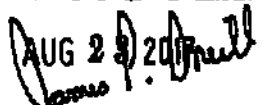
dignity of the civilians they swear to serve and protect. Respondent's actions here were in direct contravention to those objectives - - he initiated a physical altercation by delivering a severe blow to Ghiresh Sookdeo's face, causing injuries that required days of hospitalization and surgery. He fled the scene within seconds, neither giving nor seeking aid for the injured man. In addition, his failure to notify anyone at any point indicates he never intended to take responsibility for his actions. Based on this reprehensible conduct, his continued employment as a police officer is untenable. I therefore recommend that Respondent be DISMISSED from the Department.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

AUG 29 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JASON WHYTE
TAX REGISTRY NO. 937733
DISCIPLINARY CASE NO. 2014-12338

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received a 4.0 overall rating of "Highly Competent" in 2016 and 3.5 ratings of "Highly Competent/Competent" in 2014 and 2015. [REDACTED]

Respondent has no prior disciplinary adjudications. He was placed on Level 1 Discipline Monitoring from July 11, 2008 to July 13, 2009 for Negative Performance/Behavior. In connection with the present matter, he was suspended on September 4, 2014 and thereafter placed on modified duty on October 6, 2014. He was also placed on Level 2 Discipline Monitoring on November 7, 2014. Monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials